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IN THE SUPREME COURT

STATE OF ARIZONA

AMENDED

Sua Sponte Petition to Amend)
Rule 6.8(a) and (c), Arizona Rules of) Arizona Supreme Court
Criminal Procedure) No. R-09-0033
_____)

Pursuant to Rule 28(B) of the Rules of the Supreme Court, the following amendment to Rule 6.8(c), Arizona Rules of Criminal Procedure, is proposed. This proposed amendment will eliminate the requirement that appellate counsel representing a defendant in a capital direct appeal have prior experience as counsel in post-conviction relief proceedings.

This amended petition further proposes to add the following language to subsection (a): "In determining eligibility under this rule, an attorney's practice in another state or federal jurisdiction may be considered." In addition, it is proposed that subsection (c)(2), regarding qualifications for post-conviction counsel, include an attorney's experience as lead counsel in trials.

Text of Proposed Amendment

Rule 6.8. Standards for appointment and performance of counsel in capital cases.

a. General. To be eligible for appointment in a capital case, an attorney

(1) Shall have been a member in good standing of the State Bar of Arizona for at least five years immediately preceding the appointment;

(2) Shall have practiced in the area of state criminal litigation for three years immediately preceding the appointment; and

(3) Shall have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

If an attorney is a member in good standing of the State Bar of Arizona, an attorney's practice in another state may be considered for purposes of satisfying the requirements of subsections (1) through (3).

b. [unchanged]

c. Appellate and Post-conviction Counsel. To be eligible for appointment as appellate or post-conviction counsel, an attorney must meet the qualifications set forth in section (a) of this rule and the following:

(1) Appellate counsel. Within three years immediately preceding the appointment, ~~the attorney shall have been lead counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed (including petitions for review of post-conviction proceedings), as well as and have prior experience as lead counsel in the appeal of at least three felony convictions and at least one post-conviction proceeding that resulted in an evidentiary hearing.~~ Alternatively, an attorney must have been lead counsel in the appeal of at least six felony convictions, including at least two of which were appeals from first or second degree murder convictions, and lead counsel in at least two post-conviction proceedings that resulted in evidentiary hearings.

(2) Post-conviction counsel. Within three years immediately preceding the appointment, the attorney shall have been lead counsel in a trial, appeal or post-conviction proceeding in a case in which a death sentence was imposed, and have prior experience as lead counsel in the appeal of at least three felony convictions and a trial or post-conviction proceeding with an evidentiary hearing. Alternatively, the attorney must have been lead counsel in the appeal of at least six felony convictions, including two appeals from first or

second degree murder convictions, and lead counsel in at least two trials or post-conviction proceedings with evidentiary hearings.

~~(2)~~ (3) The attorney shall hHave attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.

~~(3)~~ (4) The attorney sShall be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

d. [unchanged]

DATED this _____ day of February, 2010.

By:

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Arizona Supreme Court